



The Competitive Carriers Association

Rural Cellular Association

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Via ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: CC Docket No. 01-92
WC Docket No. 10-90
WC Docket No. 07-135
WC Docket No. 05-337
GN Docket No. 09-51**

Dear Ms. Dortch:

On October 5, 2011, Steven K. Berry and In-Sung Yoo of RCA; Ben Moncrief of C Spire Wireless; Mitch Rose of Mitch Rose Strategic Consulting; Doug Minster of Atlantic Tele-Network; Brian Taylor of Allied Wireless; Grant Spellmeyer of U.S. Cellular; David LaFuria of Lukas Nace Gutierrez & Sachs; and I met with Christine D. Kurth, Policy Director & Wireline Counsel to Commissioner McDowell, to further discuss the need for a clear, well-reasoned and rational transition from current competitive eligible telecommunications carriers (CETC) high-cost funding to a new Mobility Fund to avoid a negative effect on competitive wireless carriers. The RCA carrier members noted above were on hand to provide greater insight into the operational concerns raised by this uncertainty. This *ex parte* notification is being filed electronically with your office pursuant to Section 1.1206 of the Commission's Rules.

As RCA carrier members' most immediate concern, RCA believes the uncertainty surrounding transition to a standalone Mobility Fund has delayed existing deployment plans, threatens to put future broadband investment on hold, and adversely impacts potential new entrants, with substantial negative effects on the customers those carriers serve. RCA continues to push for a sufficient amount of support, use of a cost model with success-based portability¹ and opposes the use of reverse auctions in a reformed universal service fund (USF).² But in the near-term, the business

¹ Letter of Steven K. Berry, President & CEO, RCA, and Rebecca M. Thompson, General Counsel, RCA, to Marlene H. Dortch, Secretary, FCC, filed in WC Docket No. 10-90 *et al.* (Aug. 3, 2011) at 5–8 [hereinafter *ABC Plan Letter*].

² *In re* Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime, *Comments of The Rural Cellular Association*, WC Docket Nos. 10-90, 07-135, 05-337; GN Docket No. 09-51; CC Docket No.01-92 (Apr. 18, 2011) at 5–6, 9, 17–19 [hereinafter *CAF NPRM Comments*]; *In re* Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime, *Reply Comments of The Rural Cellular Association*, WC Docket Nos. 10-90, 07-135, 05-337; GN Docket No. 09-51; CC Docket No.01-92 (May 23, 2011) at 10–16 [hereinafter *CAF NPRM Reply*].

concerns of RCA's carrier members also require immediate focus on the potential phase down of current high-cost support. The insufficient level of funding allocated to the Mobility Fund is a major concern, but the possibility of high-cost support elimination without a delineated replacement mechanism compounds that uncertainty, a crucial issue for carriers with financial commitments of 10 or more years. RCA carrier members described how this uncertainty has and will continue to harm wireless carriers and the consumers they serve.

The potential withdrawal of high-cost support has already negatively-impacted established build-out plans and put at risk existing facilities constructed with high-cost support. The real possibility of decommissioning cell sites would affect consumers, local business and public safety.³ And once shut down, there is no guarantee that subsequent funding would revive those sites. Allied Wireless, which operates almost exclusively in remote areas, expressed concern that certain proposals could make it unable to sustain portions of its current service areas without continued support. Allied also spoke to additional current difficulties stemming from the 2008 cap on CETC USF support. U.S. Cellular noted that their current build plans—which project out as much as five years—are put into immediate jeopardy by the threat of flash cuts, with tens of millions of dollars at stake. C Spire Wireless stated that phase down of current support without assurance of future support could disrupt 2G service in entire counties within its service area and asked that the Commission institute a “trigger” that would allow for phase down only when there was clarity on the next wireless funding mechanism. C Spire Wireless also questioned the Commission's current authority to fund broadband under Section 706.⁴ RCA urged the FCC to allow current CETCs receiving USF support the opportunity to determine whether they will have access to USF under the FCC's new mechanism to avoid stranded investment. The Commission must ensure sufficient funding for wireless CETCs and delay phase down of existing support until a replacement funding mechanism has been established and implemented.⁵ A well-reasoned and rational glide path to high-cost mobile broadband funding must adhere to principles of competitive and technological neutrality and ensure vital services are not affected during this transitional phase.

RCA reiterated that even as diverse industry segments debate over the merits of various technologies and approaches to USF reform, consumers have already made their choice clear and that choice is wireless.⁶ C Spire Wireless noted that in Mississippi and Arkansas—two of the

³ *In re* Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up, *Comments of MTPCS, LLC d/b/a Cellular One*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45 (Aug. 24, 2011) at 28.

⁴ See *In re* Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up, *Comments of Cellular South*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45 (Apr. 18, 2011) at 16–20; Letter of Russell D. Lukas, Lukas, Nace, Gutierrez & Sachs, to Marlene H. Dortch, Secretary, FCC, filed in WC Docket No. 10-90 et al. (Aug. 31, 2011) at 5–7.

⁵ See *CAF NPRM Comments* at 20–21; *CAF NPRM Reply* at 5.

⁶ Local Telephone Competition Report at 24 (Mar. 11, 2011); Press Release, IDC, IDC: More Mobile Internet Users Than Wireline Users in the U.S. by 2015 (Sept. 12, 2011), <http://www.idc.com/getdoc.jsp?containerId=prUS23028711>; NTCA 2011 Wireless Survey Report at 3.

nation's more rural states—over 35 percent of consumers now rely solely on wireless.⁷ RCA also discussed the anti-competitive effects competitive wireless carriers and consumers would experience should wireline companies using high-cost funds based on wireline costs build out *wireless* networks. U.S. Cellular observed that high-cost support would be effectively reserved for the largest, most profitable companies to build subsidized 4G networks in competition with smaller regional carriers. Consumer preference must factor into the Commission's eventual reform decisions.

RCA carrier members also expressed opposition to a Right of First Refusal (RoFR) for wireline carriers as it is anti-competitive and unsupported by the record or consumer preference, which favors wireless.⁸ A RoFR ignores the realities of the market and picks winners and losers with nothing to justify such favoritism. This technologically-biased policy ignores the efficiencies and cost-effectiveness that wireless services offer, has no basis in the Act and cuts the consumer out of the equation.⁹ A RoFR entrenches a government-sanctioned monopoly provider and is nothing more than a wireline attempt to preclude competition.

RCA also discussed its ongoing concern with the proposed \$300 million allocation for a wireless fund.¹⁰ RCA has advocated that \$1.5 billion—half of what the wireless industry currently contributes—would be an equitable allocation,¹¹ but that it could support an \$800 million Mobility Fund if the FCC also allocates a sufficient amount for annual operating expenses and if the largest wireless carriers and RLECs are prohibited from participating.¹²

In addition to the amount of the Mobility Fund, RCA expressed its opposition to the use of anticompetitive reverse auctions¹³ and its support for a forward-looking cost model, coupled with

⁷ Amy Gahran, *Arkansas, Mississippi top U.S. in wireless-only households*, CNN.COM, Apr. 20, 2011, http://articles.cnn.com/2011-04-20/tech/wireless.only.households.gahran_1_wireless-only-households-wireless-telephones-regional-wireless-carriers?_s=PM:TECH.

⁸ *ABC Plan Letter* at 3–4; *In re Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, *Comments of The Rural Cellular Association*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45 (Aug. 24, 2011) at 14–17 [hereinafter *ABC Plan Comments*]; *In re Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, *Reply Comments of RCA – The Competitive Carriers Association*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45 (Sept. 6, 2011) at 3, 6, 10–11 [hereinafter *ABC Plan Reply*]; Letter of Steven K. Berry, President & CEO, RCA – The Competitive Carriers Association; Keven K. Lippert, Vice President & General Counsel, ViaSat, Inc.; Jeffrey H. Blum, Senior Vice-President & Deputy General Counsel, DISH Network L.L.C., EchoStar Technologies L.L.C.; Lisa R. Scalpone, Vice President & General Counsel, WildBlue Communications, Inc.; Dean A. Manson, Senior Vice President, General Counsel & Secretary, Hughes Network Systems, LLC, to Julius Genachowski, Chairman, FCC, et al. (Sept. 20, 2011) at 1.

⁹ *Id.*

¹⁰ *In re Universal Service Reform Mobility Fund*, *Comments of Rural Cellular Association*, WT Docket No. 10-208 (Dec. 16, 2010) at 9–11; *In re Universal Service Reform Mobility Fund*, *Reply Comments of Rural Cellular Association*, WT Docket No. 10-208 (Jan. 18, 2011) at 4–5.

¹¹ *ABC Plan Comments* at 13–14; *ABC Plan Reply* at 8.

¹² Letter of Rebecca M. Thompson, General Counsel, RCA, to Marlene H. Dortch, Secretary, FCC, filed in WC Docket No. 10-90 et al. (Sept. 27, 2011) at 2.

¹³ See *CAF NPRM Comments* at 5–6, 9, 17–19; *CAF NPRM Reply* at 10–16; *In re Mobility Fund; Connect America Fund; A National Broadband Plan for Our Future; High-Cost Universal Service Support*, *Comments of Cellular*

portability. This approach will allow the FCC to competitively base support on the costs an efficient carrier would incur in providing broadband service for an area. RCA described how larger carriers could use their scope and scale to under bid the support amount in order to eliminate a competitor in the market and/or to reduce its roaming expenses in a particular market.

RCA strongly urges that the FCC bring some level of near-term certainty to USF reform in order to allow wireless carriers to properly forecast their financial commitments and ensure continued service to their customers and the public at large. As the FCC continues to piece together the components of a reformed high-cost fund, it must at the same time establish distribution of new wireless broadband support before phasing down current CETC support. Failure to do so would exacerbate an already difficult situation for wireless carriers and leave rural consumers unserved.

Sincerely,

/s/

Rebecca M. Thompson
General Counsel

cc: Christine D. Kurth, Esq.